

BENOWITZ

operations for a while. He moved on, took another hedge fund job.

Q. He is no longer working --

A. No, he worked with David Berger.

Q. Do you know what your gross income was in 2005, on your 2005 personal tax returns?

A. No.

Q. Do you know what your gross income was on your 2004 tax returns?

A. No.

Q. Do you know what your gross income was on your 2003 tax returns?

A. No.

Q. At some point in time Greg's relationship ended with Vision, correct?

A. Correct.

Q. Do you know who took over what he did for the Vision hedge fund?

A. No, I am not sure exactly which employee or who did it. It could have been Randy.

Q. Who was in charge of finances for the Vision hedge fund, in 2005?

A. Randy.

Q. Was David Berger involved with that

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at all?

A. Yes.

Q. How about Anti?

A. I don't think he did that, but you can ask Randy. I don't think he was involved in finances.

Q. Do you know what Anti did?

A. He did a variety of things. Everybody sort of did a variety of things. I would say he was more on legal stuff than finance stuff.

Q. That is Anti Vuseihamala, is that correct?

A. Yes.

Q. I think we already discussed it, but were there people that actually did work for VCA and Vision, other than Jordan Fraser and David Berger?

A. Yes.

Q. There may have been others as well?

A. Yes.

Q. Do you know by whom they were compensated, what entity, what company?

A. I don't.

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Q. Do you know if any of the employees of the Vision hedge fund in 2005 received a percentage of the net profits from the Vision hedge fund?

A. I don't think so.

Q. Do you know of any employees of VCA

--

A. I don't think so, but I defer you to Randy.

MR. FISHER: Let him finish the question.

Q. Other than you and Randy who split up the net profits of the VCA, was anyone employed by VCA as part of compensation received a percentage of net profits of VCA?

A. I don't know but ask Randy about compensation, he would have answers to all those questions for sure.

Q. Jordan Fraser no longer is working for Vision?

A. Correct.

Q. When is the last time you talked to Jordan?

A. I talked to him over the weekend.

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2 Q. How often do you talk to Jordan?

3 A. Every couple of months.

4 Q. What was your conversation about
5 this weekend?

6 A. He wants to move back to New York.
7 His career, he has a kitchen cabinet business
8 working out of Dallas.

9 Q. Did you call Jordan or did he call
10 you?

11 A. He called me.

12 Q. What did he call you for
13 specifically?

14 A. He wanted to talk about his career,
15 mostly just to shoot the shit.

16 MR. FISHER: Just try to answer the
17 question.

18 Q. Did you talk to Jordan at all about
19 the deposition coming up?

20 A. No.

21 Q. Have you talked to Jordan at all
22 about this lawsuit?

23 A. I don't think so, certainty not to
24 any great extent.

25 Q. Other than your attorneys, have you

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talked to anyone about this lawsuit?

A. Yes.

Q. Who?

A. I don't know, just generally people at work. Mostly just that it exists. I don't talk about details of it.

Q. Do you remember the last time you talked about this lawsuit to someone, other than your attorneys?

A. Yes, I talked to my girlfriend last night and said I had to go to a deposition today.

Q. How about before that conversation last night, when is the last time you talked to someone about this lawsuit, other than your attorneys?

A. I have not discussed details, but people around work know that you know, Randy had a deposition and I had a deposition, that's about the extent of what was talked about.

Q. Did you talk to Randy at all about his deposition?

A. Yeah, I said, "how did it go?"

Q. What did he say?

A. He had the deposition you know, it

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was long.

Q. In preparation for today's deposition did you review documents?

A. I looked, I don't read very well. I am not a good document reviewer.

Q. Other than your attorney, did you talk to anyone in preparation for today's deposition?

A. No.

Q. I want to go back to the other question. I understand you are not a big reader.

Did you review any documents in preparation for today's deposition?

A. I looked at one document with my attorney.

Q. What document was that?

A. I don't know.

THE WITNESS: What document was that?

MR. FISHER: I will just represent for the record the document was the answer and counter-claim that was filed in this case.

Q. When is the last time you talked to

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Greg?

A. I believe it was when he stormed out of our office.

Q. Do you remember when that was?

A. In like late '05 or early '06 or something, it's the last time I recall.

Q. Why don't you tell me about that last time you saw him?

A. He was supposed to, this is what I recall. He was supposed to in be New York for something and he came up and was only there for like a few minutes, or a very brief period of time and he got aggravated about something and he left. At least I didn't hear from him again after that. I believe he traded a bunch of e-mails with Randy though.

Q. Do you know what he got angry at?

A. I forgot. I don't recall exactly.

Q. What is your understanding what led to the end of the relationship between Greg and Vision?

A. Sorry. Say that again.

Q. What is your understanding as to what led to the end of the relationship between

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Greg and Vision?

A. What led to the end of it?

Q. Yes.

A. Greg walking out and never talking to us again.

Q. Prior to him walking out, did you ever have any inclination that the relationship between Greg and Vision was ending?

A. He became increasingly erratic and hard to deal with during '05, and I believe this is, I don't have this exact, this is my recollection. His work product was poor. His personality was angry and difficult and impossible. I think we collectively decided to wind up that relationship. I know Randy exchanged e-mails, whatever. We came to some closing thing, closing agreement, and I think that was it. Which then Greg did not fulfill to the best of my recollection.

Q. You said that his work product was poor, what are you basing that on?

A. Like I said, I remember he got a bunch of things wrong on the hedge fund, whatever. Again, I am not an operational expert. Randy.

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2 would know what was wrong. There was a problem
3 with both our reports when running an audit.

4 Q. Would Randy have been the person
5 that would have most information on this issue?

6 A. Yes.

7 Q. You said you collectively decided to
8 end the relationship. Who was part of that
9 collective decision?

10 A. Greg and Randy and I, I imagine, but
11 I don't remember specifically, that's my
12 impression.

13 Q. Do you know when that decision was
14 made?

15 A. I don't recall exactly.

16 Q. Do you know if that decision was
17 made before or after the meeting in New York City
18 when you described he stormed out?

19 A. I think that there was some kind of
20 agreement in place before that but I am not a
21 hundred percent sure. I think we came to sort of,
22 there was some sort of understanding work that was
23 supposed to be done, and he never did it. It's
24 operational, ask Randy, he would probably know
25 exactly what it was.

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Q. At the time that the decision was made for the relationship to end between you Randy and Greg, were you getting paid a salary from the Vision hedge fund?

A. I don't remember.

Q. Do you remember Greg ever communicating with you that he was not aware that you were getting a salary from the hedge fund?

MR. FISHER: Objection to form.

Lack of foundation.

A. I don't remember.

Q. Did Greg ever say to you that he thought he was a partner in the Vision hedge fund with you and Randy?

A. I can't remember a specific instance. If he had said that to us I would have immediately said, no, that is not the case.

Q. Generally, do you have a recollection of it? You don't have a specific recollection. Do you have a general recollection?

A. I have a general recollection of Greg screaming and yelling claiming all sorts of things. He was sort of a lone gunman kind of thing. Greg claimed lots of things that were not

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true during my time of knowing him.

Q. What did he claim that are not true?

A. I should not say I know it not to be true. Greg claimed to have built Susquehanna's complete trading system.

Q. What else?

A. I just remember him claiming things, many times that he claimed.

Q. I want to know your recollection, what else do you recall?

A. He would claim stuff that he did at Susquehanna and when I go talk to people at Susquehanna they would say, that's not true.

Q. Do you recall anything specific?

A. No.

Q. Anything other than you remember Greg claiming he built the entire trading system, did you talk to anyone about that?

A. I talked to someone at Susquehanna and they said it's a joke.

Q. Who is that?

A. An IT guy.

Q. You don't remember that IT person?

A. No.

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2 Q. That's no?

3 A. That's no.

4 Q. Do you remember anything else that
5 Greg claimed what you consider not to be true or
6 found out later not to be true, other than what
7 you mentioned about Susquehanna?

8 A. No, I don't remember specifics. I
9 have that general feeling.

10 Q. Other than these other things, do
11 you have a recollection, specific or general about
12 Greg claiming what he was promised by you in terms
13 of compensation for the work he had done at
14 Vision?

15 A. Do I recall him claiming?

16 Q. Yes, that you recall Greg
17 complaining that you made promises to him?

18 A. I don't recall specifics but I do
19 remember Greg asking for stuff that was not at all
20 part of what he was supposed to get.

21 Q. Around the time that his
22 relationship ended, do you recall Greg asking for
23 10 percent share of net profits of the Vision
24 hedge fund?

25 A. I do not.

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Q. Do you recall Greg asking you if you were getting a salary from the Vision hedge fund?

A. I do not.

Q. Were you involved at all with formulating an agreement to purchase Greg Morgenweck's software, in January 2006?

A. Do I recall?

MR. FISHER: Were you involved?

Q. Were you involved?

A. I think, I don't remember a hundred percent. Maybe Randy did that, but Randy may have consulted with me, but I don't remember specifically. We, Randy and I made a collective decision with that.

Q. Was David Berger involved with that?

A. I don't think he was involved with that.

Q. Anti?

A. No.

Q. Anti was?

A. No, not in negotiating.

Q. Do you know who had lead role in negotiations?

A. Either Randy or I.

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Q. Between you and Randy do you know who would have?

A. Normally it would be me, but I think in this case it may have been Randy, but I don't recall.

Q. You don't have a specific recollection today about whether negotiations were between you and Greg or Randy and Greg, about this agreement?

A. No, only a general recollection that there was one.

Q. Do you recall as to why you wanted to enter into that agreement?

A. I don't remember exactly why.

Q. Do you know whose idea it was to enter into an agreement?

A. No, I don't remember.

Q. Do you know if it was Vision's idea or if it was Greg's idea?

A. I do not remember.

Q. Do you recall any negotiations about the amount dollar amount of the purchase agreement?

A. I do not remember any specifics.

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Q. Was Greg generating and developing reports for the Vision hedge fund?

A. I think so. You can ask Randy, but I think he was.

Q. Do you recall looking at these reports?

A. I do not.

Q. Do you recall receiving these reports on a daily basis?

A. I do not recall it, but it's possible. They were operational reports that I did not receive, or it's possible I just don't remember getting them, or it's possible that they were not important, but I don't remember them.

Q. Is David Berger still employed by Vision?

A. Yes.

Q. Does David Berger have a written employment contract?

A. Yes.

Q. Does David Berger receive a certain percentage of net profits, or does he just receive a salary, or both?

A. Not a specific percentage, he is

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salary plus bonus.

Q. What is the bonus based on?

A. I have to check.

Q. How about Anti, does Anti have a written contract with Vision?

A. Yes.

Q. With Vision?

A. Yes.

Q. What is the basis of his compensation?

A. Salary plus bonus, his bonus as a formula I don't remember what.

Q. Who is Jonathan Shane?

A. He works for us.

Q. What does he do?

A. He is sort of what I would say, he helps with lots of things. He helps Randy. You are getting over in operations, I don't know what exactly he does.

Q. Is he still employed?

A. Yes.

Q. Do you know when he first started working for Vision, the hedge fund?

A. Very early '05 or early '06 I think.

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2 Q. Do you know if he had any
3 interaction with Greg Morgenweck?

4 A. I don't remember.

5 Q. Do you know if he had any
6 personality issues with Greg?

7 A. I don't remember.

8 Q. Do you know if he had any work
9 related difficulties with Greg?

10 A. I don't remember.

11 MR. SHEA: I have about another
12 hour. Do you want to take a break?

13 MR. FISHER: Sure.

14 (Whereupon a brief recess was
15 taken.)

16 Q. Mr. Benowitz, did Greg ever
17 communicate to you that while working for Gargoyles
18 or doing side work for any of the Vision entities
19 he passed up other opportunities with other
20 companies because of his work with Gargoyles, and
21 Vision entities?

22 A. I don't remember.

23 Q. Did you ever discuss with Randy
24 Greg's request for more money?

25 A. I am sure.

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Q. Do you have any recollection about a conversation you had with Randy?

A. No, but I am sure I talked about it with him.

Q. Is that a presumption that you would have talked to Randy?

A. I mean Greg talked all the time. I don't recall a specific conversation. I am sure I talked to him about it.

Q. Did you and Randy have any communications where you discussed the possibility of paying Greg more money, in addition to the 10 percent?

A. I don't have a specific recollection.

Q. Do you have any recollection?

A. Not really to tell you the truth. Again, it seems like the type of thing, it came up, we talk about everything that comes up.

Q. Sitting here today, do you have a specific or general recollection about having a conversation with Randy about paying Greg more money, in addition to 10 percent of Gargoyle's net profit?

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2 A. I don't remember specifics.

3 Q. Do you have a general recollection?

4 A. I don't even have a general
5 recollection. If it came up we would talk about
6 it.

7 Q. I could probably guess the answer.
8 Do you recall having any communications with Greg
9 about the time of his blowup, about him asking for
10 more money?

11 MR. FISHER: Blowup?

12 MR. SHEA: When he stormed out.

13 A. Other than Greg asking for more
14 money all the time, I have a general recollection
15 of Greg asking for more money all the time, before
16 the blowup, during the blowup.

17 Q. The type of work that Greg did for
18 VCA, I think you described it as computer work?

19 A. Operations.

20 Q. Did you have any outside contractor
21 that assisted with operation type work, for VCA?

22 A. I can't remember, Randy would know.

23 Q. Did you have an outside contractor
24 or consultant that assisted in operation work for
25 the Vision hedge fund, while Greg Morgenweck was

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there?

A. I don't remember.

Q. After Greg left, at some point in time did you learn that Greg was seeking to be paid additional monies, in addition to what he already received?

MR. FISHER: Aside from this lawsuit?

MR. SHEA: Yes, prior to.

A. I didn't talk to him after that.

Q. At some point in time did you learn Greg Morgenweck was paid additional monies, over and above what he already received?

A. Other than what?

Q. At some point in time did you learn, including this lawsuit?

A. Including it?

Q. Yes.

A. When he came and filed this lawsuit against us, that's clear. I really didn't have communication with him. Any communication was with Randy. I was disgusted. I don't recall any communication with him by me after that, including, even during that.

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2 Q. What were you disgusted about?

3 A. Just basically I was angry with him
4 because he didn't do the things he said he would
5 do. He was unfair, greedy, he blamed other people
6 for things that were his fault. I was just
7 generally disgusted with the whole thing.
8 Honestly, we tried to you know, do him a favor so
9 he repaid us by basically being a complete A hole.
10 That is my opinion.

11 Q. Why do you say he was greedy?

12 A. He just wanted money without any
13 regard to the deal we had made or anything. He
14 just felt like you know, he could do nothing and
15 what little he did, in my understanding he did not
16 do well. Then just you know, demand money because
17 you know, he felt like it, that's me
18 editorializing a little bit.

19 Q. You said you were angry with him
20 because he said he was going to do things that he
21 did not do, is that what you already told us
22 about?

23 A. Yes.

24 Q. Anything else specific?

25 A. If I recall anything specific I will

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bring it up.

Q. You also said that it's your understanding he didn't do it well?

A. Like I said for the specific stuff where he made mistakes that caused us reporting audit.

Q. Is that what you already told us about?

A. Yes.

Q. I don't mean to cut you off. I don't want a rehash or reiterate things.

At any point in time did you know how long it took Greg to do his job, on a daily basis?

A. I do not.

Q. That is even afterwards, after he left?

A. I don't know.

Q. You said that you were angry and disgusted with Greg because he was unfair. What did you mean he was unfair?

A. Just yelling, screaming, complaining, demanding, when in my opinion he did basically, virtually nothing, and many of the key

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things he did was wrong. I guess I felt that he was completely out of line.

Q. What was he yelling and screaming about?

A. He had pressure on him I suppose and he would say that he needed money, then he was probably demanding money for. I remember generally being totally disgusted with him.

Q. You said, he virtually did nothing, what do you base that on?

A. I guess I should say I don't really know. I guess it didn't seem like he did a lot, but I am not in operations. I guess that is more an impression on my part than a fact.

Q. Were you ever told that what he did was necessary for the operation of VCA?

A. Was I told?

Q. Yes, did you ever come to learn, were you told?

A. I don't think so. I don't recall anyone telling me that.

Q. Were you ever told that what he did for VCA was not necessary?

A. I don't recall that.

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Q. Did you ever come to learn that what he did for Vision Holdings was necessary?

A. Vision?

MR. SHEA: Holdings.

Q. Sorry, Vision hedge fund?

A. I don't recall having any conversation about an absolute necessity what he did.

Q. What about unnecessary, that it was not necessary, in other words --

A. I don't remember specifics, this is a question about operations. I don't recall a lot. I want to say Randy took care of the operations.

Q. How about after Greg left, did you have any conversations about necessity of the work that was done by Greg, for Vision Holdings?

A. I can recall general, a general sort of feeling or general gist of conversation that things went a lot more smoothly and operations went better with him gone.

Q. Do you know why they went smoothly?

A. I don't know, you have to ask Randy or David.

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Q. You said he blamed others for things that were his fault. What did he blame people for that was his mistake?

A. I can't think of specifics to be fair.

Q. What favor did you do for him, you said you did him a favor and he paid you back by this lawsuit?

A. By getting him involved, my impression was that he had -- this was my impression, I don't know if it's true. He had this thing with Rock Hill, they didn't like him and they let him go and he had no other employment. This is my impression, whether it's true I don't know. This is my general impression, and we tried to get him some work because I knew him.

Q. Where did you get that impression from?

A. I would think from him.

Q. Do you have a specific or general recollection of him telling you that?

A. I have a general recollection of thinking that, I don't remember where I got that

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feeling.

Q. How did you first learn of this lawsuit?

A. I can't remember, somebody contacted, they didn't contact me specifically. I think they contacted Lisa.

Q. That's Lisa Snow?

MR. FISHER: Don't answer questions if the question calls for you to disclose information that you learned from Lisa Snow. You should exclude that from your answer because that is privileged.

A. The answer, I don't know exactly how I learned of it first.

MR. SHEA: I do intend to get those conversations. I reserve the right for all conversations with Mr. Benowitz.

MR. FISHER: It is our position she is an in-house attorney to the lawsuit. Obtaining legal or getting legal advice is privileged.

Q. I don't want to know right now, did you have a conversation with Lisa Snow about Greg Morgenweck, prior to receiving this lawsuit?

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2 A. I don't think so, not that I can
3 remember.

4 Q. Other than your attorneys, who have
5 you discussed this lawsuit with?

6 A. I mean various people around. I
7 don't discuss the details of the lawsuit, but its
8 existence, a bunch of people.

9 Q. Have you exchanged e-mails other
10 than with your attorney, regarding this lawsuit?

11 A. I doubt it, I don't really send
12 e-mails. I am not big on e-mail.

13 Q. I had sent a request for production
14 of records as part of this lawsuit. In response
15 your attorney forwarded documents to my attention.
16 Were you involved at all with the search for
17 records in response my request?

18 A. Me?

19 Q. Yes. You personally?

20 A. I don't think so, how would I search
21 for records?

22 Q. Where would you receive e-mails, in
23 2003?

24 A. In 2003?

25 MR. FISHER: What e-mail address?

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2 THE WITNESS: I don't remember. I
3 don't know. I don't think I had the one I
4 have now. I really am not an e-mailer. I
5 don't read very well because I only have one
6 eye and I don't spell very well so I don't
7 send mails, hardly ever.

8 Q. Do you have a work e-mail address?

9 A. Yes.

10 Q. Right now?

11 A. Yes.

12 Q. What is that?

13 A. Adam@visicap.com.

14 Q. How long have you had that address?

15 A. A couple of years, as soon as Visi
16 Cap started.

17 Q. What is Visi Cap?

18 A. Vision Cap.

19 Q. Is that the hedge fund?

20 A. Whatever the organization, that's
21 the e-mail address.

22 Q. Did you get that in May of 2005?

23 A. I don't remember when we got it.

24 Q. Do you know what type of search was
25 done as far as e-mails, as far as my request for

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2 documents?

3 A. I do not know.

4 Q. Do you have a home computer that you
5 have at home that you use for work?

6 A. No, I play video games on it.

7 Q. Do you have a lap top?

8 A. I do but I don't know where it was
9 and have not used it in a long time.

10 Q. Do you use a computer at all for
11 your work?

12 A. Yes I, look at Bloomberg all day.

13 Q. How do you find out what is going on
14 in the hedge fund, in terms of how it is doing, on
15 a daily basis?

16 A. I look at things like Bloomberg on
17 custom screens.

18 Q. Do you look at that every day?

19 A. Yes.

20 Q. Do you ever look at that while you
21 are at home?

22 A. I am not going to say never, but
23 almost never.

24 Q. Are you in the office every day?

25 A. More or less, yes.

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2 Q. When you are not in the office do
3 you look at it at home?

4 A. Almost never, I don't have Bloomberg
5 on my home computer.

6 Q. Did you ever send e-mails from your
7 home computer, regarding work?

8 A. I could not recall ever having sent
9 one. It's possible I have. I actually don't have
10 any -mail on my home computer.

11 Q. Did you have an e-mail address
12 outside of your work?

13 A. No.

14 Q. Have you ever had an e-mail address
15 outside of your work?

16 A. Yes, a long time ago.

17 Q. Did you have an e-mail address
18 before you got the Visi Cap e-mail?

19 A. I don't know. In general I am the
20 person if I have an e-mail I would use one. It's
21 conceivable that I had more than one, but not
22 multiple.

23 Q. Did you check your e-mail at home
24 for any of those documents?

25 A. I did not.

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Q. Did anyone?

A. I don't think so.

Q. Did anyone ask you to look at your home computer for something regarding this lawsuit?

A. No.

Q. Who would have copies of your tax returns for the years 2003, 2004 and 2005?

A. Richie Eisenberg probably, maybe David Berger.

Q. Did Vision VCA file a tax return for 2003?

A. I don't know.

Q. How about 2004?

A. I think so.

Q. Who would have a copy of that?

A. David Berger.

Q. How about 2005, did VCA file a tax return for 2005, I should say whether the company, Vision Capital Associates or Advisors, is that correct?

A. Yes.

Q. It's different from Vision Capital Advisors that was in 2003 or 2004, is that

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correct?

A. I think so. Randy can answer all the questions.

Q. Who would have a copy of the tax returns filed by the first Vision Capital Advisors, in 2005?

A. I think David Berger or probably Randy.

Q. Is a tax return filed for the hedge fund and its entities?

A. I would guess.

Q. Who would I have to ask, David Berger?

A. And Randy.

Q. Do you know who was involved in getting copies of those tax returns for VCA and Vision?

A. I have no idea.

Q. Did you ever maintain any type of personal notes from conversations that you had with Greg Morgenweck, during his employment or during his work with you?

A. No.

Q. What is Cryptic Press?

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A. Cryptic Press?

Q. Do you know?

A. It could be when I was like, I think like in my 20's my father had a friend that was a dentist who self published a mistery novel. That might have been itself the mistery name.

Q. Do you know what Plymouth Corporation is?

A. No.

Q. What about Manage Risk Trading?

A. There are certain entity names I had when I was a trader.

Q. G and D?

A. G and D, George and Dave, I worked with them on the floor for a little bit. I don't know what they are called now. That was probably in 1995.

Q. Do you know if you were taking any type of draw as salary from a Vision hedge fund in 2005?

A. I don't remember.

Q. Do you know if you were paid in 2006 from Vision Capital, VCA, in 2006?

A. I don't know.

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2 Q. Do you know how much Greg Morgenweck
3 received from Gargoyle, in 2005?

4 A. I have no idea.

5 Q. This was previously marked as P5. I
6 am not going to mark it again but I will attach it
7 to this deposition.

8 MR. FISHER: Tell me if you need any
9 help reading this.

10 A. Okay.

11 Q. Let me know when you are ready.

12 A. Do you want me to read the whole
13 thing?

14 Q. Just the top part that begins with
15 partners.

16 A. (Witness complies).

17 MR. FISHER: Off the record.

18 (Whereupon a discussion was held off
19 the record.)

20 Q. This e-mail is dated Tuesday
21 September 20th 2005. Do you have a recollection
22 of receiving this e-mail?

23 A. No.

24 Q. I understand that you don't recall.
25 Do you have any recollection of receiving it?

1 BENOWITZ

2 A. I have a general recollection, this
3 was Greg's tone. The specifics I don't remember
4 but in general it sounds a lot like Greg.

5 Q. Do you know what he means when he
6 says, I been saying "no" to opportunities for the
7 past year and a half?

8 A. I don't know what he is talking
9 about. I would like to say in general, this
10 general recollection besides when I would talk to
11 Greg we would reiterate again because he was kind
12 of like a lone gunman. We reiterate specifically,
13 Randy and I, we both would have said, go do what
14 you need to do. We were partners with Tuomo and
15 we were not making any money. We would have said,
16 go ahead.

17 Q. You referred to Greg as, a lone
18 gunman. What did you mean by that, describe him?

19 A. Sorry, I don't want to characterize
20 it.

21 Q. What did you mean by that?

22 A. The lone gunman that goes in the
23 tower and shoots men below.

24 Q. Yes?

25 A. That's what I mean by that. Sorry,

BENOWITZ

in general, crazy.

Q. You think Greg is crazy?

A. Yes.

Q. How long did you think Greg was crazy, from the first time you met?

A. I thought he was excited and I thought he got more and more crazy.

Q. Did you ever have fear of Greg that he would go into the tower?

A. No, I didn't think Greg would come get me.

Q. Do you know what Greg meant when he said, starts off the mail with "partners"?

A. No.

Q. As you sit here today you don't know what he meant by the term, partners?

A. No.

Q. I am going to show you what was previously marked as Plaintiff's Exhibit 1. Can you take a look at that document?

A. Okay.

Q. I am only going to refer you to the paragraph which begins \$680,000.00 of business expenses. For the record this is an e-mail from

BENOWITZ

Randy Cohen to an individual by the name of Richie who I believe Mr. Cohen indicated to me is Richie Eisengerg, is that correct.

A. I think so.

Q. He is an account, is that correct?

A. Yes.

Q. This document is dated Saturday April 15th 2006. The paragraph, \$680,000.00 of business expenses which about \$50,000.00 is for restaurant expenses and about 55 for club membership. It indicates he has in fact paid handsomely for the business. It continues on, 260 to Adam and the rest to me.

MR. FISHER: Objection.

Q. Do you know whether this 260 was paid to you?

A. I recall that 260 was paid to me.

Q. Do you know if this is for salary?

A. I don't know, Randy would know all that.

MR. SHEA: Can I have this marked?

(Whereupon, a four page document, was marked as Plaintiff's Exhibit 8 for identification, as of this date.)

BENOWITZ

Q. P8 is an e-mail from Greg Morgenweck dated Monday August 22, 2005 at 11:04 p.m. sent to you, Jordan Fraser and Anti and cc'd to David Berger. Subject, Vision Opportunity Fund, today's P&L report, 8/22/05, attach P&L by security with detail, snap shot document.

Do you recall receiving, not this document, but this type of document on a daily basis, from Greg Morgenweck?

A. I remember receiving it. I don't know on what basis. Now that I see it I remember getting stuff like this. I don't know if I ever got this (indicating).

MR. FISHER: By this the witness is referring to the second page, a portion. The witness did get the second, third and forth page of the exhibit.

THE WITNESS: If I had received the second, third and forth page I can't read well enough. I do remember now getting things like this (indicating).

MR. FISHER: Like the first page?

THE WITNESS: Yes.

Q. In this e-mail with attachment you

BENOWITZ

are looking at a hard copy of the e-mail with attachment. If it was on a computer would you have looked at it?

A. Doubtful, but I would look at something like that (indicating).

MR. FISHER: The witness is indicating the chart that appears on the first page of the exhibit.

THE WITNESS: Like twelve sells on the spread sheet or ten sells.

Q. Do you know what is involved in creating this database?

A. I do not.

Q. Sitting here today do you have any understanding or knowledge as to what it took for Greg Morgenweck to create these reports?

A. No.

MR. SHEA: Can I have this marked?

(Whereupon, a three page document was marked as Plaintiff's Exhibit 9 for identification, as of this date.)

Q. This is an e-mail from Greg dated Monday August 22, 2005, time 11:15 to Adam Benowitz and Jordan Fraser and Anti, and cc'd to

1 BENOWITZ

2 David Berger, subject, Vision Opportunity Fund
3 today's real and unreal P&L report, attach,
4 realized and unrealized P&L by security and
5 account, a hundred percent time value, snap shot
6 document.

7 Again, do you recall receiving, I am
8 not asking specifically the document in front of
9 you. Do you recall receiving this type of
10 document from Greg Morgenweck for the Vision hedge
11 fund.

12 A. Not particularly.

13 Q. The subject is Vision today's
14 realized and unrealized P&L report one hundred
15 percent time value. Is that information in which
16 you would need?

17 A. Something more Randy would look at
18 every day.

19 Q. Did you look at this information at
20 all?

21 A. I may have looked at it, it was not
22 a regular tool that I used.

23 Q. What did you do for the Vision hedge
24 fund?

25 A. For the Vision hedge fund?

BENOWITZ

1

2

Q. Yes.

3

A. I made the final decision what to

4

buy and what to sell.

5

Q. How did you go about making that

6

decision?

7

A. How did I go about making the

8

decision?

9

Q. Yes.

10

A. It's very complicated.

11

Q. You don't have to go through

12

everything. Generally, what did you do?

13

A. I try to buy stock that I think will

14

go up.

15

Q. Did you do research into the

16

companies?

17

A. I am not a researcher, I have a

18

staff that does that. That's the same thing, I

19

did not.

20

Q. Going back to 2005, who did research

21

for you?

22

A. I guess Anti and Jordan.

23

Q. Do you know what they researched?

24

A. Talking to the guys that ran the

25

companies. Our research was not that rigorous

BENOWITZ

back then. We didn't have the money and intellectual that we do today which is more in depth.

Q. Did you do an analysis of their numbers?

A. We would look at everything a little bit.

Q. Was Greg Morgenweck involved at all in doing those analysis?

A. I don't believe so, not in any significant way that's for sure.

Q. Did you go and visit any of those potential companies?

A. We visited ones we could, yes.

Q. Who was involved with making decisions, other than yourself, as to what to buy, what not to buy? Who was involved in the final word?

A. Randy would also give his input a lot but I am the final word, as I am still the final word.

Q. Did you have any interaction with Greg, for the Vision hedge fund?

A. What do you mean, interaction?

1 BENOWITZ

2 Q. Yes. Work, did you have to deal
3 with him at all?

4 A. Not really.

5 Q. Did you deal with him at all?

6 A. I had to.

7 Q. For the Vision hedge fund?

8 MR. FISHER: Work with him?

9 MR. SHEA: Deal with him.

10 Q. Did you have to deal with him at
11 all?

12 A. Sometimes I guess I would have to
13 speak to him. Nothing he specifically did, he was
14 not involved in portfolio management. He was
15 involved in information. Randy and David Berger
16 dealt with him more than me.

17 Q. You already told us that you worked
18 with Greg at Rose Glen and your interaction was
19 mostly socially?

20 A. Yes.

21 Q. Did you ever do any type of deals
22 with Greg, any type of business deals with Greg at
23 Rose Glen?

24 A. I didn't do business deals at Rose
25 Glen, I was a trader.

1 BENOWITZ

2 Q. Did you ever discuss any type of
3 projects with Greg while you were working with him
4 at Rose Glen?

5 A. Not that I can recall, it's
6 possible.

7 Q. I show you what was marked as P7.
8 You don't have to read the whole thing. I
9 represent to you it is a copy of the answer and
10 counter-claim that was filed on your behalf and
11 behalf of Randy Cohen, Vision Capital Advisors,
12 Vision Opportunity Capital Management to
13 plaintiff's complaint in this matter. Referring
14 you to paragraph 16.

15 MR. FISHER: Of the counter-claim?

16 MR. SHEA: Of the counter-claim.

17 A. Okay.

18 Q. Paragraph 16 states, he also refused
19 to deal directly with certain employees of the
20 Vision entities that he needed to in order to
21 perform his job satisfactorily.

22 Do you know what certain employees
23 Greg refused to work with directly?

24 A. I don't know exactly.

25 Q. Do you contend that Greg Morgenweck

1 BENOWITZ

2 left with trading information of the Vision hedge
3 fund that was confidential?

4 A. I guess. I mean we don't know for a
5 fact, but we strongly suspect that.

6 Q. What do you suspect he left with?

7 A. A lot of Randy's quantitative stuff.
8 I don't know for sure if he left with it. We
9 heard Jim Crombie was marketing a different hedge
10 fund using Randy's theories we discussed.

11 Q. I am just trying to understand what
12 your basis is for suspecting that Greg left with
13 this information of Randy's?

14 A. You have to ask Randy, he knows more
15 about it.

16 Q. Are you aware by anyone saying Greg
17 Morgenweck gave confidential information to Jim
18 Crombie?

19 MR. FISHER: Objection to form.

20 A. I don't remember specifically which
21 information it was but we came to believe that.

22 MR. FISHER: Who came to believe
23 that?

24 THE WITNESS: Randy and I.

25 Q. How did you come to believe that?

1 BENOWITZ

2 A. I guess somebody told us about it,
3 but I don't remember the specific conversation,
4 Randy may.

5 Q. What do you believe someone told
6 you?

7 A. That Crombie was taking Randy's
8 proprietor theory and marketing them as part of
9 whatever hedge fund he was doing at that time.. I
10 have a very vague recollection of Randy or
11 Christopher Polk, but it's a very vague
12 recollection.

13 Q. If I understand, you believe Greg
14 gave information to Crombie?

15 A. I have a vague recollection.

16 Q. As you sit here do you have a
17 recollection now Greg is involved with Jim Crombie
18 in having this information?

19 A. I don't remember exactly, I only
20 have a vague recollection. The specifics I think
21 Randy would have a more specific recollection.

22 Q. After Greg left do you have a
23 recollection of anyone from Vision asking Greg
24 Morgenweck that he return any and all confidential
25 proprietary trading information?

1 BENOWITZ

2 A. Do I have a recollection of anyone
3 at Vision asking him for that?

4 Q. Yes.

5 A. Including me?

6 Q. Including yourself.

7 A. No.

8 Q. Do you know anyone that did?

9 A. I don't.

10 Q. Referring to paragraph 19 of the
11 counter-claim.

12 A. Okay.

13 Q. It says, despite repeated demands
14 Morgenweck had not returned any of the
15 confidential information belonging to the Vision
16 entities that was given while performing the
17 contract.

18 First of all, do you know what
19 confidential information is being discussed in
20 paragraph 19 on the counter-claim?

21 A. I don't know specifically. I
22 believe that Randy sent an e-mail about this kind
23 of stuff, but again I didn't.

24 Q. Who made repeated demands?

25 A. I am not sure but I think it was

BENOWITZ

Randy.

Q. Going to paragraph 20 of the counter-claim.

A. Okay.

Q. It says, upon information and belief Morgenweck has kept that confidential information and provided some, if not all of it to another individual who in turn has attempted to extort millions of dollars from the defendants.

What information and belief is that paragraph based on?

A. I believe Jim Crombie sent sort of a shakedown letter.

Q. Did he mention Greg's name in that letter?

A. I don't remember.

Q. Did it say Greg provided confidential information?

A. I don't remember.

Q. Are you aware of any instances Greg Morgenweck kept confidential and proprietary information and provided that information of a Vision Entity?

A. Aware of any?

1 BENOWITZ

2 Q. Colleagues.

3 MR. FISHER: Other than what you
4 already testified to.

5 A. No.

6 Q. As you sit here today --

7 A. I don't remember.

8 Q. At some point in time Sagamore Hill
9 and Bloom pulled out of Gargoyle, correct?

10 A. Yes.

11 Q. They were the only investors at the
12 time in Gargoyle?

13 A. I think so.

14 Q. Did you and Randy ever discuss how
15 Greg would be compensated now that there is no
16 longer an investor in Gargoyle?

17 A. I don't remember.

18 Q. Did Greg ever say anything to you
19 about how he would be compensated after Sagamore
20 Hill pulled out of Gargoyle?

21 A. I don't remember.

22 Q. Is it your position Greg is not owed
23 any money for the work that he did for Vision
24 entities?

25 MR. FISHER: Objection to form.

1 BENOWITZ

2 A. He didn't work for the Vision
3 entities and yes, it is my position that we owe
4 him absolutely nothing.

5 Q. Why do you say that?

6 A. We made an explicit deal that was
7 repeated many times, which was a great deal for
8 him, a great deal at the time that he had for
9 doing the systems work that he did. That he had
10 10 percent of profits from the quant arb project.
11 This was repeated many times to Greg.

12 Q. In 2005 did you still think it was a
13 good deal for Greg?

14 A. Yes, the opportunity had it worked
15 out could have earned a ton of money.

16 Q. The opportunity didn't work out?

17 A. Opportunities don't work out all the
18 time but if it did it was a deal for Greg, the
19 strategy right now.

20 Q. Why did you offer him such a great
21 deal?

22 A. We thought it would be, you make
23 business decisions all the time. We thought he
24 was better than he was. We thought he was more
25 dependable than he was.

BENOWITZ

Q. When did you come to the conclusion that he was not as good as he was?

A. Over time in working with him it became clear that he didn't do the things he was supposed to do. When he did do things they were often sloppy and incorrect. He was not timely about anything. He just really was not an upstanding guy, but we learned that over time in working with him.

Q. What do you mean, he was not timely with things?

A. I have a vague recollection of him promising to get things done by a certain point and he did not get it done by a certain time. You can ask Randy, this is feedback by my operations team so again, it's general.

Q. You also mentioned sloppy.

A. He did things --

Q. Things you already told us about?

A. Yes.

Q. Timely and sloppy that is with regard to his work product, regarding the work he did?

MR. FISHER: Was criticism of work

1 BENOWITZ

2 that he did.

3 A. Criticism of him, the work, the
4 computer program, himself, or him in general?

5 Q. Not being timely and being sloppy as
6 you described, was that the work that he did
7 either for you or Randy?

8 A. Yes. That's my general impression.
9 Randy can give you specifics.

10 Q. Randy would be the one with
11 information on that?

12 A. Yes.

13 Q. He would have been a more reliable
14 person to ask for that information?

15 A. Yes, more specific person to do so.

16 Q. What did you mean, he is not an
17 upstanding guy?

18 A. He was desperate and quick with
19 anger. In fact sitting here today is making me
20 think he is not an upstanding guy.

21 Q. Why do you say that?

22 A. Because this is a completely
23 baseless claim that he is making and you know,
24 that's why.

25 Q. Why do you say, it's a baseless

BENOWITZ

claim?

A. This is what I said.

MR. FISHER: What you already testified why he doesn't believe any of the defendants owe Mr. Morgenweck money.

Q. Why do you say this is a baseless claim?

A. We had an explicit deal.

Q. What you testified to?

A. Yes, what I testified to.

Q. When did you come to the conclusion that he was a desperate individual?

A. I think we all thought he was a little desperate as a human being. For a minute he was okay and over time he got more desperate.

(Continued on next page to include jurat.)

1 BENOWITZ

2
3 Q. When did you come to the conclusion
4 that he was quick to anger?

5 A. A half hour after I met him.

6 MR. SHE: Thank you very much for
7 your time.

8 (Whereupon, at 2:07 the
9 examination of this witness was
10 concluded.)

11
12 ADAM BENOWTIZ

13
14 Subscribed and sworn to before me
15 this day of 2009.

16
17
18 NOTARY PUBLIC
19
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24
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Mr. Shea

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C E R T I F I C A T E

STATE OF NEW YORK)
 : SS.:
COUNTY OF QUEENS)

I, NANCY NASCA, a Notary Public for and
within the State of New York, do hereby certify:

That the witness whose examination is
hereinbefore set forth was duly sworn and that such
examination is a true record of the testimony given
by that witness.

I further certify that I am not related
to any of the parties to this action by blood or by
marriage and that I am in no way interested in the
outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 12th day of January 2009.


NANCY NASCA

WORD
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